



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

July 12, 2024

Chris Allanach
Legislative Revenue Officer
255 Capitol Street NE, 5th floor
Salem, OR 97301

Re: Revenue effect of Initiative Petition 17, modification of corporate minimum tax

Dear Mr. Allanach:

You have asked for our interpretation of provisions of Initiative Petition 17. Specifically, you have inquired about the meaning of the following sentence, found in section 2 (1) of the measure:

The increase in corporate minimum tax revenue attributable to Section 1 of this 2024 Act shall be used to provide an equal rebate to each individual, as defined in ORS 316.022, who has resided in this state in the aggregate more than 200 days of the eligibility year.

We conclude that this sentence can only be read to describe the amount of corporate minimum tax that would be received by the state under IP 17, as compared to the amount of corporate minimum tax that would be received absent the enactment of IP 17. This is the amount that is required to be used for rebates. We do not anticipate that a court would find an alternative reading, for example, that the amount of funds to be used for rebates would be required to equal the change in overall corporate excise tax revenue.

Initiative Petition 17

If enacted, IP 17 would modify the provisions of the minimum tax that is owed by certain corporations doing business in Oregon and imposed under ORS 317.090. Under ORS chapter 317, a corporation or corporate group doing business in Oregon must pay the greater amount of either the corporate excise tax calculated using ORS 317.061 and based on the taxpayer's income, or the minimum tax arrived at under ORS 317.090, based on the taxpayer's Oregon sales. If IP 17 were to become law, in addition to the current amount of minimum tax, corporations with Oregon sales in excess of \$25 million that are subject to the corporate minimum would owe three percent of the excess sales over \$25 million. Initiative Petition 17 directs that the increased corporate minimum tax revenue is to be used to provide rebates to Oregon residents.

Potential revenue effects of IP 17

We conclude that IP 17 specifically requires the change in amount of corporate minimum tax revenue received to be used for rebates. We observe that this amount will necessarily be larger than the "revenue impact" for IP 17, as derived under general practice. Under ORS 173.025, it is our understanding that in preparing a revenue impact statement for a legislative measure, the

Legislative Revenue Officer compares revenue that would be received as projected under the current law as opposed to that which would be received if the measure became law. The generally accepted revenue impact of IP 17 would be significantly less than the amount of increase of corporate minimum tax that would result from enactment of the measure. This is because by modifying the corporate minimum tax calculation for taxpayers with more than \$25 million in Oregon sales, IP 17 would have the result that some corporate excise taxpayers who previously owed the tax calculated under ORS 317.061 and based on income would now owe the corporate minimum tax instead. This shift of certain taxpayers away from paying the corporate excise tax imposed using rates and toward paying the corporate minimum tax will result in a corresponding decrease in taxes being paid under ORS 317.061, such that the amount directed to rebates will be larger than the increase in overall corporate excise tax revenues, with the difference reducing corporate tax collections available for other purposes, compared to current law.¹

Analysis

In order to determine the meaning of the sentence in question, we resort to statutory construction. In interpreting the meaning of statutes, Oregon courts discern the legislative intent by looking first to the text and context of the statutes, and then, if useful, to any relevant legislative history.² If, after a review of the text, context and legislative history, the court concludes that the meaning of the statute is ambiguous, “the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.”³ Although here we analyze an initiative petition and thus voter intent, the methodology we use is consistent with that used in the examination of legislative enactments and legislative intent.⁴

In this instance, as the provision has not yet been considered by voters, we can look only to text and context. In any event, text and context always form the starting point for analysis and are given “primary weight.”⁵

First, we examine the term “corporate minimum tax,” which has a clear meaning. Currently, ORS 317.090, which is amended in IP 17, provides that:

Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a *minimum tax*⁶

This provision is long-standing and is commonly known as the “corporate minimum tax,” which is the term used in IP 17. While ORS 317.090 is contained within the corporate excise tax chapter codified as ORS chapter 317 and does serve as an alternative tax applicable to corporate excise taxpayers, the corporate minimum tax is distinct from the remainder of the chapter and the primary corporate excise tax imposed under ORS 317.061. The corporate minimum tax is singular; it is identifiable, and its revenue is measurable.

¹ We note that IP 17 directs that on or before December 31 of each year, the Department of Revenue is to “determine” the net amount available “by estimating” the increase. We expect that it may be difficult for the department to make a determination as described. Discussion of the mechanics of the determination or the rebates and questions as to timing are beyond the scope of this opinion.

² *State v. Gaines*, 346 Or. 160, 171-172 (2009).

³ *Id.* at 172.

⁴ *State v. Shumway*, 291 Or. 153, 162 (1981) (citing *Anthony et al. v. Veatch et al.*, 189 Or. 462, 497 (1950)).

⁵ *Kinzua Resources v. Oregon Department of Environmental Quality*, 366 Or. 674, 680 (2020), summarizing *Gaines*.

⁶ ORS 317.090 (2) (emphasis added).

Next, we examine the term “corporate minimum tax revenue.” In IP 17, this term is used in three instances: in section 2 (1), as quoted above, and in section 3 (1)(a) and (2). Our primary focus is on section 2 (1), as this subsection contains the direction as to funds that are to be used for rebates, but we note that this term is used consistently and exclusively throughout IP 17. The term “corporate minimum tax revenue” is unambiguous; it can only refer to the revenue that is received under the corporate minimum tax. There is nothing in IP 17 to support a different reading of “increase in corporate minimum tax revenue attributable to Section 1 of this 2024 Act.” There is no basis in the text for a contrary proposition, for example, that the funds destined for use as rebates would be intended to be limited to the increase in the corporate excise tax overall. Further, under *Gaines*, we also consider context, which includes the statute(s) being amended. Initiative Petition 17 makes changes only to the corporate minimum tax. The proposed measure makes no mention of ORS chapter 317 or to terms such as “corporate excise tax” or “corporate tax.” Presumably, if the intent of the measure were to direct that the change in overall corporate excise tax revenue be used for rebates, the measure would indicate that by inclusion of amendments or at least reference to the rest of ORS chapter 317.

We observe that, were IP 17 to be approved by the voters, a court’s analysis of IP 17 would potentially shift to include inspection of the history of the ballot measure, including information provided to voters in the voters’ pamphlet. However, we caution that even after approval by the voters, a court would need to view the text as sufficiently ambiguous to proceed to an examination beyond text and context. In other words, if, as here, the text appears unambiguous and capable of only one meaning, it remains the best evidence of the intent of the voters. Where the text is truly unambiguous, a court will not seek another meaning through the examination of ballot measure history.⁷

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Catherine M. Tosswill
Special Counsel and Chief Editor

⁷ *Knopp v. Griffin-Valade*, 372 Or. 1, 15-16 (2024); *Lipscomb v. State by & through State Board of Higher Education*, 305 Or. 472, 485 (1988).